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**CONFIDENTIAL
TELECOPY MESSAGE**

TO: Examiner Arthur L. Corbin

DATE: April 4, 2005

FROM: Russell D. Culbertson

PAGES INCLUDING COVER: 5

RE: Application Serial No. 09/833,866

FAX NO.: (703) 872-9306

OUR FILE NO.: 317.1026

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MESSAGE:

**RE: SERIAL NO. 09/833,866
GROUP ART UNIT 1761**

**ATTACHED:
APPELLANT'S REPLY BRIEF**

**PLEASE DELIVER TO
EXAMINER ARTHUR L. CORBIN**

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Russell D. Culbertson, Reg. No. 32,124



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PATENT
317.1026

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In Re Application of:)
Eldon Roth)
Serial No.: 09/833,866) Group Art Unit: 1761
Filed: April 12, 2001) Examiner: Arthur L. Corbin
FOR: pH ENHANCED MEAT)
COMPOSITION AND METHOD FOR) Facsimile No.: (703)872-9306
PRODUCING A pH ENHANCED)
MEAT COMPOSITION)
Mail Stop Appeal
Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

APPELLANT'S REPLY BRIEF

This paper is filed in response to the Examiner's Answer mailed February 4, 2005, in the appeal for the above-identified matter. Appellant submits this Reply Brief within the two-month period for response set in 37 C.F.R. §41.41(a)(1).

The Appellant's Brief filed November 22, 2004, fully addresses the errors in the Final Office Action mailed April 23, 2004, from which this Appeal is taken, and sets forth the reasons that the appealed claims are entitled to allowance. This reply to the Examiner's Answer is submitted to address statements in the Examiner's Answer relating to the teachings of the Japanese publication to Nakayama et al., and relating to the proposed combination of this Nakayama reference with U.S. Patent No. 5,871,795 to Roth.

REMARKS

I. The Nakayama Reference and 795 Patent Cannot Be Combined Under 35 U.S.C. §103 As Proposed by The Examiner.

The Appellant asserts that it is improper to combine the Japanese publication to Nakayama et al. ("Nakayama" or the "Nakayama reference") with U.S. Patent No. 5,871,795 to Roth (the "795 patent") in the manner proposed by the Examiner in this case. The Examiner's Answer to Appellant's Appeal Brief indicates at lines 11-13 of page 3 that the Nakayama reference is relied upon for the concept of using ammonia gas and ammonium hydroxide interchangeably in the treatment of comminuted meat. However, there is simply no teaching or suggestion in the Nakayama reference or elsewhere in the prior art for the broad concept that ammonia gas and ammonium hydroxide may be used interchangeably in all treatments of comminuted meat. Rather, the Nakayama reference simply teaches that an ammonium hydroxide (aqueous ammonia) solution or ammonia gas may be applied to the surface of meats, including comminuted meats, to reduce odors emanating from the surface of the meats. (The Nakayama reference at page 3 of the English translation submitted in the IDS of January 23, 2002).

After stating that the Nakayama reference is cited for the broad concept that ammonia gas and ammonium hydroxide may be used interchangeably in the treatment of comminuted meats, the Examiner's Answer goes on to conclude that the Nakayama reference is therefore clearly analogous to, and properly combinable with, the 795 patent. However, the issue here is not whether Nakayama is analogous to the 795 patent or even whether or not Nakayama is combinable with the 795 patent under 35 U.S.C. §103. The issue is whether the 795 patent and

1 the Nakayama reference, as properly combined under 35 U.S.C. §103, teach or suggest each and
2 every element set out in the present claims.

3 Taking Appellant's claim 1 as an example, the claim requires increasing the moisture
4 content of a comminuted meat product and ultimately distributing an ammonium hydroxide
5 solution throughout the meat product. The remaining independent claims include similar
6 limitations as to increasing moisture content and distributing an ammonium hydroxide solution
7 throughout the meat product. In order for the combination of the 795 patent and the Nakayama
8 reference to meet these claim limitations, one must disregard the teaching in Nakayama that the
9 ammonium hydroxide is applied to the surface of the meat product as discussed at the fourth full
10 paragraph of page 3 of the reference, disregard the teaching as to gas pressure in the 795 patent at
11 Col. 2, line 3 through Col. 3, line 3 and elsewhere, and substitute ammonium hydroxide solution
12 for the treatment gas in the apparatus shown in Figure 2 of the 795 patent. However, as
13 discussed above and in detail in the Appellant's Appeal Brief at pages 4-7, there is simply no
14 teaching in the Nakayama reference, the 795 patent, or elsewhere in the prior art to combine the
15 references in this way. Considering that there is no teaching, suggestion, or motivation in the
16 prior art to combine the Nakayama reference and the 795 patent as proposed by the Examiner, the
17 proposed combination can only represent an impermissible hindsight reconstruction of the
18 Appellant's claimed invention.

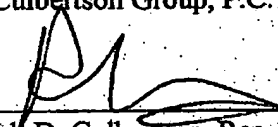
1 II. Conclusion

2 For all of these reasons, the Appellant submits that claims 1, 3 through 20, and 22 are
3 entitled to allowance, and respectfully requests that the Board reverse the decision of the
4 Examiner rejecting these claims.

5
6 Respectfully submitted,

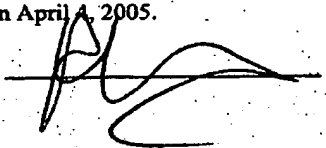
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